REMARKS

The Amendments

Claim 1 is amended to address the new 35 U.S.C. § 112 and 35 U.S.C. § 103 rejections.

It is submitted that the above amendments would put the application in condition for allowance or materially reduce or simplify the issues for appeal. The amendments are believed to be specifically directed to removing the rejections, as discussed below. The amendments do not raise new issues or present new matter and do not present additional claims. The amendments have been made to address the new grounds of rejection made for the first time in the Final Office Action. Thus, they could not have been earlier presented. Accordingly, it is submitted that the requested amendments should be entered.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejection Under 35 U.S.C. § 112, Second Paragraph

The rejection of the claims under 35 U.S.C. § 112, second paragraph, is believed to be rendered moot. Claim 1 is amended to remove the "essentially" term which formed the basis of the rejection. Thus, the rejection should be withdrawn. Applicants point out, however, that this is not intended to exclude from the claims compositions which contain mere trace

amounts of the excluded components which have no effect of consequence on the composition.

The Rejections Under 35 U.S.C. § 103

The rejections of the claims under 35 U.S.C. § 103, as being obvious over Sawruk (U.S. Patent No. 5,478,579) alone or in view of Lanzendorfer (WO 96/18381), Fujirebio (JP 4234320) and Bean (U.S. Patent No. 4,132,782) are respectfully traversed.

Sawruk discloses a composition for enhancing absorption of calcium into mammalian bone tissue. The composition contains a flavonol aglycone glycoside and a calcium source. The flavonol aglycone glycoside may be quercitin, hyperoside, isoquercitrin, rutin, kaempferol, myricetin or isorhamnetin. Sawruk fails to disclose or suggest a composition which contains isoquercitrin and at least one of 5-ethyldeoxyuridine, galangin, propolis, chrysin, apigenin, luteolin, acacetin, eriodictyol, quercitrin, catechol, hesperitin, a glycoside of any of the above other components, a vitamin, a carotene and ascorbic acid. Compare amended claim 1. Sawruk makes no mention or suggestion of any of 5-ethyldeoxyuridine, galangin, propolis, chrysin, apigenin, luteolin, acacetin, eriodictyol, quercitrin, catechol, hesperitin, a glycoside of any of the above other components, a vitamin, a carotene or ascorbic acid. Accordingly, the claims cannot be obvious to one of ordinary skill in the art in view of Sawruk alone and the first rejection based thereon, at least, should be withdrawn.

The Lanzendorfer, Fujirebio and Bean references were cited in the Office Action not for teaching the combined two active components of the claimed compositions but for teachings relating to amounts of the components, form of delivery and activity of the components. Thus, the references do not make up for the above-discussed failure of Sawruk to suggest applicants' combination. None of Lanzendorfer, Fujirebio and Bean teach or

suggest the combination of isoquercitrin and at least one of 5-ethyldeoxyuridine, galangin, propolis, chrysin, apigenin, luteolin, acacetin, eriodictyol, quercitrin, catechol, hesperitin, a glycoside of any of the above other components, a vitamin, a carotene and ascorbic acid, in the absence of flavones, flavonoids or glycosides thereof other than isoquercitrin or the other above-listed components. Thus, for example, although Bean discusses the optional inclusion of β-carotene in its compositions, it does not exclude flavones, flavonoids or glycosides thereof other than isoquercitrin or the other above-listed components, as previously established. For these reasons, at least, the rejection under 35 U.S.C. § 103 should be withdrawn since the combined reference teachings don't suggest the claimed invention.

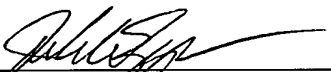
Furthermore, even if the references did teach components which, if combined, could result in compositions of applicants' claims, no motivation is provided by the references, or otherwise, for why one of ordinary skill in the art would modify the Sawruk compositions based on teachings of any of Lanzendorfer, Fujirebio or Bean. The compositions of Sawruk are provided to enhance calcium absorption in the body. Lanzendorfer is directed to compositions for topical use to treat skin conditions, Fujirebio is directed to compositions for treating hepatitis B and Bean is directed to compositions for treating herpes simplex. There is no connection established as to why one of ordinary skill in the art would expect teachings from any of these references to provide any suggestion to modify the Sawruk compositions because the objectives of each reference are so distinct. Absent motivation to make such combinations, they cannot be combined to support a rejection under 35 U.S.C. § 103. Simply because all the references relate to compositions containing flavones does not provide the requisite motivation to pick and choose components from the various references and combine them. For this additional reason, it is urged that the rejection under 35 U.S.C. § 103 is not supported because the references are not properly combinable.

For all of the above reasons, it is urged that the rejections under 35 U.S.C. § 103 should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



John A. Sopp, Reg. No. 33,103
Attorney for Applicants

MILLEN, WHITE, ZELANO &
BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-1900

Date: July 1, 2003

K:\merck\1900\Reply to 5-6-03 OA.doc